

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

LANDRY’S RESTAURANTS, INC.

Plaintiff

v.

POST ADVISORY GROUP, LLC AND
LORD ABBETT BOND-DEBENTURE
FUND, INC.

Defendants

and

U.S. BANK NATIONAL ASSOCIATION
Solely in its capacity as successor trustee
Under the Indenture dated as of December
28, 2004 under which Landry’s Restaurants,
Inc.’s 7.50% Senior Notes due December
15, 2014 were issued,

Nominal Defendant

CIVIL NO. 3:07-C.V.-00406

**MOTION TO STRIKE PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Landry’s Restaurants, Inc. (“Landry’s”) filed a Motion for Summary Judgment in this case on August 15, 2007.

A party seeking to recover on a claim or obtain a declaratory judgment can move for summary judgment “at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party” FED. R. CIV. P. 56(a); *see also S. Pac. Transp. Co. v. Nat’l Molasses Co.*, 540 F.2d 213, 214 n.2 (5th Cir. 1976) (“A summary judgment motion is not appropriate until 20 days after the suit is filed . . .”).

Landry's filed its Verified Original Complaint and Application for a Temporary Restraining Order on August 1, 2007.

Landry's summary judgment motion was filed less than twenty days after it had commenced this action, and thus under the Federal Rules of Civil Procedure it is untimely and should be stricken in its entirety.

Dated: August 16, 2007

Respectfully submitted,

By: /s/ Scott Humphries
Scott Humphries

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was electronically served on the following counsel of record via ECF on the 16th day of August 2007, as indicated below. Where indicated, counsel was also served via facsimile.

/s/ Brandon T. Allen

Brandon T. Allen

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